



**INDIANA COURT OF APPEALS
ORAL ARGUMENT AT A GLANCE
WABASH COLLEGE**

H.D., ET AL. v. BHC MEADOWS HOSPITAL, INC., ET AL.

Appeal from:
Monroe Circuit Court
The Honorable Stephen Galvin,
Judge

Oral Argument:
Tuesday, February 26, 2008
3:00—4:00 p.m.
30 minutes each side

STATUTORY INTERPRETATION

Does the Indiana Medical Malpractice Act require that the Dosses' claims, arising from a breach of patient confidentiality, be presented to a medical review panel before an action may be commenced in an Indiana court?

Facts and Procedural History

On November 17, 2003, John and June Doss, found what they believed to be a suicide note authored by their fourteen-year-old daughter, H.D. As a result, arrangements were made for H.D. to be counseled the next day at her school in eastern Illinois. H.D.'s school counselor recommended BHC Meadows Hospital, Inc., d/b/a a Bloomington Meadows Hospital (Meadows), an adolescent psychiatric hospital, to H.D. and her parents.

Meadows provided an assessment to the Dosses, performed by a psychiatric nurse in Terre Haute, Indiana. After meeting individually with H.D., John, and June, the psychiatric nurse recommended that H.D. be admitted to the Meadows. The Dosses resisted initially because of

concerns for H.D.'s reputation at school, and concerns for their own confidentiality because they were both school teachers in the school system where H.D. attended. However, they agreed to admit H.D. after they were assured that the hospitalization would be private and that it would never be shared with the school. When signing a confidentiality agreement, the Dosses specifically indicated that they did not wish for information concerning H.D.'s hospitalization to be shared with her school counselor or the school.

Late in the evening of November 18, 2003, H.D. was admitted to Meadows Hospital in Bloomington, Indiana. On November 19th, she began receiving counseling and other services at Meadows. H.D.'s therapist at the Meadows, having not reviewed a form which noted the specific

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request that H.D.'s school counselor not be contacted, sent a fax to H.D.'s school directed to her counselor. The message was labeled "re: [H.D.'s first name] D.," and stated:

Thanks for referral. Addressing issues of depression stress.
Doing well, withdrawn and anxious @ times. Please call @ 812-961-2476 to discuss issues.
Thanks again.

The fax machine at H.D.'s school was located in the general secretarial pool in the main office of the high school and students also worked in this area.

When H.D.'s school counselor came back to the school the next day, teachers knew that H.D. had been hospitalized and that she had been diagnosed with depression.

When H.D. returned to school after Thanksgiving break, her school counselor asked about her well-being and about the Meadows. Later that day, her basketball coach asked her when she was going to tell her teammates about her hospitalization. H.D. became upset and distraught because people knew that she had been hospitalized for psychiatric reasons, and again began demonstrating suicidal behavior.

H.D. was re-assessed by the psychiatric nurse who noted her depression caused by her perception that everyone at her school knew she had been hospitalized. A release of information form, which again precluded H.D.'s school from being contacted, was completed at the time of this assessment. However,

on January 20, 2004, two additional letters were sent to H.D.'s school counselor regarding H.D.'s hospitalization at Meadows. The letters were satisfaction surveys sent by the Meadows' CEO.

On November 8, 2005, the Dosses filed a complaint seeking compensation and punitive damages for invasion of privacy, negligent infliction of emotional distress, intentional/reckless infliction of emotional distress, and violations of the Illinois Mental Health and Developmental Disabilities Confidentiality Act. Meadows responded by moving to dismiss, alleging that the Dosses' claims were subject to the Indiana Medical Malpractice Act, which requires submission of the matter to a medical review panel prior to filing an action in an Indiana court. The trial court denied Meadows' motion to dismiss. However, on June 6, 2007, Meadows filed a renewed motion to dismiss, again arguing that the Medical Malpractice Act applied to the Dosses' claims. The trial court granted this motion and ordered dismissal of the Dosses' action on July 9, 2007.

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Parties' Arguments



On appeal, the Dosses argue that the Medical Malpractice Act does not apply to the claims of John and June Doss because they were not patients under the Act, and they have not claimed any bodily injury as required by the Act. They also argue that the purpose of the communication from Meadows to the school counselor was to obtain business rather than provide health care, and Meadows duty to safeguard H.D.'s information is in addition to its duty to use due care in patient treatment. Therefore, the Dosses contend, the Medical Malpractice Act—and its requirement for review by a medical review panel—does not apply. Finally, the Dosses argue there was no exercise of professional judgment when Meadow's counselor sent the fax; therefore, there is no need to present the matter to a medical review panel.

The Meadows responds arguing that the Dosses' damages stem from a therapist's communication of information regarding a patient to the patient's counselor. Therefore, the communication was directly related to the promotion of H. D.'s health, and involved the therapist's exercise of professional expertise and skill or judgment—an act which requires a review by a medical review panel to determine if it was malpractice. Furthermore, Meadows contends that damages sought by the Dosses' stem from a breach of confidentiality owed by Meadows because it is a health care provider, or stem from breach of a contract for the purpose of providing health care, either of which would require application of the Medical Malpractice Act and its requirement for review by a medical review panel.

TODAY'S PANEL OF JUDGES

Hon. Patricia Riley (Jasper County), Presiding

- **Judge of the Court of Appeals since January 1994**

Patricia A. Riley, currently the presiding judge for the Court of Appeals' Fourth District, was named to the Indiana Court of Appeals by Governor Evan Bayh in January of 1994.

A native of Rensselaer, Judge Riley earned her bachelor's degree from Indiana University-Bloomington in 1971 and her law degree from the Indiana University School of Law-Indianapolis in 1974.

Early in her career she served as a Deputy Prosecutor in Marion County and a public defender in Marion and Jasper counties before entering into private practice in Jasper County. She served as a judge of the Jasper Superior Court from 1990 to 1993.

Judge Riley is a former associate professor at St. Joseph's College in Rensselaer and is currently an adjunct professor of law at the Indiana University School of Law—Indianapolis.

Judge Riley's legal memberships include the Indianapolis Bar Association, the Marion County Bar Association, and the Indiana State Bar Association, including co-chair of the ISBA's Racial Diversity in the Profession Section; member, Women in the Law Committee; and member, Committee on Improvements in the Judicial System.

Judge Riley is the former chair of the Appellant Practice Section of the American Bar Association, and a member of the ABA's Judicial Division International Courts Committee. She is a member of the Indiana Judges Association and the Board of Directors of the National Association of Women Judges.

Judge Riley is the mother of two sons. She was retained on the Court by election in 1996 and 2006.

"Appeals on Wheels"

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began statewide just prior to the Court's centennial in 2001.

This is the Court of Appeals' 203rd case "on the road" since early 2000.

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

TODAY'S PANEL OF JUDGES

Hon. James S. Kirsch (Marion County)

- Judge of the Court of Appeals since March 1994

James S. Kirsch was appointed to the Court of Appeals in March 1994 and served as Chief Judge from March 1, 2004 to February 28, 2007. A native of Indianapolis, Judge Kirsch is a graduate of the Indiana University School of Law at Indianapolis (J.D., cum laude, 1974) and Butler University (B.A. with honors, 1968).

Judge Kirsch served as Judge of the Marion Superior Court from 1988 to 1994 and as presiding judge of the court in 1992. From 1974 to 1988, he practiced law with the firm of Kroger, Gardis & Regas in Indianapolis in the areas of commercial and business litigation and served as managing partner of the firm. Since 1990, he has held an appointment as Visiting Professor of Law and Management at the Krannert Graduate School of Management at Purdue University.

Judge Kirsch is a past-president of the Indianapolis Bar Association and of the Indianapolis Bar Foundation and is a former member of the Board of Visitors of the Indiana University School of Law-Indianapolis. He is a past-president of the United Way/

Community Service Council Board of Directors and a current or former member of the Board of Directors of the United Way of Central Indiana, of the Board of Associates of Rose Hulman Institute of Technology, and of the Boards of Directors of the Goodwill Industries Foundation of Central Indiana, Community Centers of Indianapolis, the Indianapolis Urban League, the Legal Aid Society of Indianapolis, and the Stanley K. Lacy Leadership Association. He is a Fellow of the Indiana State Bar Foundation and of the Indianapolis Bar Foundation.

Judge Kirsch is a frequent speaker and lecturer and has served on the faculty of more than 200 continuing legal education programs. He has been named a Sagamore of the Wabash by four different governors.

Judge Kirsch and his wife have two children. He was retained on the Court in 1996 and 2006.

The 15 judges of the Indiana Court of Appeals issue more than 2,800 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.



TODAY'S PANEL OF JUDGES

Hon. Melissa S. May (Vanderburgh County)

- Judge of the Court of Appeals since April 1998



Melissa S. May was appointed to the Court of Appeals in April of 1998 by Governor Frank O'Bannon and was retained on the Court by election in 2000. Judge May was born in Elkhart, Indiana. She graduated from Indiana University-South Bend with a B.S. in 1980 and from Indiana University School of Law-Indianapolis with a J.D. in 1984.

Between law school and her appointment to the Court, Judge May practiced law in Evansville, Indiana, focusing on insurance defense and personal injury litigation.

Judge May has been active in local, state, and national bar associations and bar foundations. She served the Indiana Bar Association on the Board of Managers from 1992-1994, as Chair of the Litigation Section from 1998-1999, as Counsel to the President from 2000-2001, and as co-chair of the Futures Taskforce. In addition, she was a member of the Board of Directors of the

Indiana Continuing Legal Education Forum from 1994-1999 and has been the co-chair of ICLEF's Indiana Trial Advocacy College from 2001-2005. She is a fellow of the Indiana Bar Foundation, as well as for the American Bar Association, and she is a Master Fellow of the Indianapolis Bar Association.

From 1999 till December 2004, Judge May was a member of Indiana's Continuing Legal Education Commission, where she chaired the Specialization Committee. She is currently on an Advisory Panel to the Specialization Committee. In 2005, she was named to the Indiana Pro Bono Commission. In 2003, Judge May was named to the American Bar Association's Standing Committee on Attorney Specialization. She is now special counsel to that committee. In the spring of 2004, Judge May became adjunct faculty at Indiana University School of Law-Indianapolis, where she teaches a trial advocacy course. Also in the spring of 2004, she was awarded an Honorary Doctor of Civil Law from the University of Southern Indiana.

ATTORNEYS FOR THE PARTIES

For Appellants, H.D., et al.:

Betsy K. Greene

**Greene & Schultz Trial Lawyers
Bloomington**

Betsy Greene graduated from Indiana University in 1979 and earned her law degree there in 1982, the same year she was admitted to the bar in Indiana. She is also admitted to practice before the U.S. Supreme Court, the U.S. Court of Appeals for the 6th and 7th Circuits, and the U.S. District Court for the Northern and Southern Districts in Indiana.

Ms. Greene was a prosecuting attorney in Morgan County from 1983 to 1988. She was Chief Deputy Prosecuting Attorney from 1985 to 1988. She joined the Nunn & Kelley law firm, concentrating on injury cases, from 1988 until she started her own firm in 2005. She represents those injured or killed by negligence and has personally tried over 85 jury trials in her career.

Ms. Greene is a member of the Monroe County, Morgan County, Indiana State, and 7th Circuit bar associations, serving as President of the Monroe County Bar Association in 2005. Her involvement in the Indiana Trial Lawyers Association includes immediate Past President, Executive Committee since

1994, induction into its College of Fellows, and membership on its Board of Directors. She is also a member of the Association of Trial Lawyers of America and is Past President of the American Board of Trial Advocates, Indiana Chapter (2005). She is President-Elect of the Trial Lawyers College Alumni Board, serves on the Indiana Supreme Court Committee on character and fitness, and is a frequent speaker at legal seminars.

Ms. Greene was selected as an Indiana "Super Lawyer" by Law and Politics Magazine for the first time in 2004. She has been named to that same list every year since. In 2007, she was featured a Top 50 attorney by the same magazine.

Ms. Greene has been appointed an adjunct professor at the Indiana University School of Law for the spring 2008 semester. She teaches Trial Advocacy.

For Appellees, BHC Meadows Hospital, Inc., et al.:

Lucy R. Dollens

**Locke Reynolds LLP
Indianapolis**

Lucy Dollens is an Associate at Locke Reynolds LLP, where she practices in appellate and commercial litigation. She has handled appeals to the U.S. Court of Appeals for the Seventh Circuit, Indiana Supreme Court, and Indiana Court of Appeals.

Ms. Dollens received her B.A., *cum laude*, from Butler University in 1998 and her J.D., *summa cum laude*, from Indiana University School of Law in 2002. While in law school, she served as Note Development Editor for *Indiana Law Review* and had her note published in Volume 35.

Ms. Dollens has presented on appellate issues, including "How to Create and Protect Your Good Record for Appeal, and What to Consider Before Bringing an Appeal," for Lorman Education Services in 2006, and "Top Ten Practice Tips for Young Lawyers" in State Court Appellate Practice for the Indianapolis Bar Association in 2005, 2006 and 2007.

Ms. Dollens is also an Associate with the Sagamore American Inn of Court and serves on the *Amicus Curiae* Committee for the DTCL.

